

**COPY FILED**

**IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI DEC 23 2019**

**DAVID RAYBORN**

*Shawn Little*  
**FORREST COUNTY CIRCUIT CLERK**  
**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO.:** 419-0255

**FEDEX FREIGHT, INC**

**DEFENDANT**

**JURY TRIAL DEMANDED**

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**COMPLAINT**

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This is an action to recover actual and punitive damages for age discrimination in violation of the Age Discrimination in Employment Act. The following facts support the action:

1.

Plaintiff, David Rayborn, (hereinafter "Rayborn") is an adult resident citizen of Lamar County, Mississippi who may be contacted through undersigned Counsel.

2.

Defendant, FedEx Freight, Inc., is a corporation organized under the laws of the State of Arkansas and may be served with process by service upon its registered agent C T Corporation System, 645 Lakeland East Drive Suite 101, Flowood, MS 39232.

3.

This court has federal question jurisdiction under 28 U.S.C. § 1331 and Venue is proper, because Plaintiff's employment relationship centered around Forrest County, Mississippi and because Plaintiff was based in Forrest County, Mississippi.

4.

Rayborn was an employee of the Defendant since December 2018. Rayborn was terminated in June 2019. Defendant told Rayborn he was being terminated due to a falsified allegation of dishonesty. Chad Wilkerson, an employee of Defendant, referenced Rayborn's age, called him "old man" and "old fart", and would ask him how his legs and health were holding up on a routine basis before the termination.

5.

Rayborn was a good employee who had a good employment history with the Defendant. There were no prior reprimands, misconduct, or any other basis given for Rayborn's termination of employment. Younger employees had been retained despite more serious allegations of misconduct.

6.

Defendant qualifies as an employer in accordance with the Age Discrimination in Employment Act.

7.

Rayborn was terminated on or about June 14, 2019. Rayborn filed his charge of discrimination with the Equal Employment Opportunity Commission, **Exhibit A**. On or about September 25, 2019 Rayborn received his right to sue letter. **Exhibit B**.

Rayborn has suffered loss wages, loss benefits, emotional distress, anxiety and embarrassment because of the acts and omissions of the Defendant.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that this Court:

1. Assume jurisdiction over this action;
2. Award Plaintiff nominal and actual damages for Defendants' actions and omissions;
3. Award Plaintiff compensatory damages, including, but not limited to, those for past and future pecuniary and non-pecuniary losses, emotional distress, suffering, loss of reputation, humiliation, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses;
4. Punitive damages for all claims allowed by law in an amount to be determined at trial;
5. Pre-judgment and post-judgment interest at the highest lawful rate;
6. Award *Veasley* damages, including but not limited to Plaintiff his costs of litigation, including reasonable attorney's fees and expenses;
7. Grant such other relief to which Plaintiff may be entitled or as this Court deems necessary and proper;
8. All damages and attorney fees allowed under the Age Discrimination in Employment Act.;

THIS the 23 day of December, 2019.

DAVID RAYBORN  
PLAINTIFF

  
DANIEL M. WAIDE, MSB #103543

Daniel M Waide, MS Bar #103543  
Johnson, Ratliff & Waide, PLLC

1300 Hardy Street  
Hattiesburg, MS 39401  
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**EXHIBIT**

6/18/99

**A**  
~~EXHIBIT 1~~

EEOC Form 161 (11/16)

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: David W. Rayborn  
168 Canty Rayborn Road  
Sumrall, MS 39482

From: Jackson Area Office  
100 West Capitol Street  
Suite 338  
Jackson, MS 39269



On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(e))**

EEOC Charge No.	EEOC Representative	Telephone No.
423-2019-01785	Michael G. Hollis, Intake Supervisor	(601) 948-8412

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

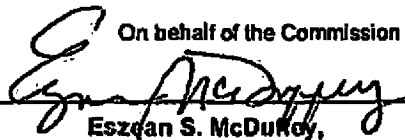
## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

  
Eszran S. McDuffy,  
Director

09/25/2019  
(Date Mailed)

Enclosures(s)

cc: Steven Fulgham  
Staff Attorney  
FedEx Freight, Inc.  
1715 Aaron Brenner Drive  
FedEx Freight Suite #600  
Memphis, TN 38120



Enclosure with EEOC  
Form 181 (11/18)

### INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.  
If you also plan to sue claiming violations of State law, please be aware that time limits and other  
provisions of State law may be shorter or more limited than those described below.)*

#### PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you *receive* this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was *mailed* to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

#### PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 -- *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

#### ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

#### ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

**IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.**

**EXHIBIT 1**

EEOC Form 1 (5-18-00)


CHARGE OF DISCRIMINATION		Charge Presented To: Agency(ies) Charge No(s):	
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		<input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	
		423-2019-01785	
and EEOC			
State or Local Agency, if any			
Name (Indicate Mr., Ms., Mx.)	Home Phone (incl. Area Code)	Date of Birth	
Mr. David W. Rayborn	(601) 906-2676	1957	
Street Address City, State and ZIP Code			
168 Canty Rayborn Road, Sumrall, MS 39482			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency that I believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name	No. Employees/ Members	Phone No. (include Area Code)	
FEDEX FREIGHT	Unknown	(601) 582-0400	
Street Address City, State and ZIP Code			
23 Braswell Road, Hattiesburg, MS 39401			
Name	No. Employees/ Members	Phone No. (include Area Code)	
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate boxes)		U.S. EEOC/JAG DATE(S) DISCRIMINATION OCCURRED	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input checked="" type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		06-25-2018 06-25-2019 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s))			
I was hired December 17, 2018, as an Operations Supervisor and on June 14, 2018, I was terminated.			
I received a call from Steve Lowe (Employee Relations) changing my termination date to June 25, 2019, paying me through that date. Chad Wilkerson (White male 40's) stated he was terminating me for an act of dishonesty. I was one of two operations supervisors; my co-worker was approximately 50. Wilkerson made reference to my age, calling me "Old Man", "Old Fart", and would ask me how my legs and health was holding up.			
The circumstances that lead to my termination was a shipment which was placed in appointment status from my work station; however, I did not make the appointment, because I was outside at the time. Wilkerson's work station is near my work station, and I did not put the bill in question in appointment status, as received on August 22, 2019.			
I believe I have been discriminated against because of my age (62) in violation of the age Discrimination in Employment Act 1967, as amended, since			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief	
Sep 03, 2019 Date		SIGNATURE OF COMPLAINANT SIGNATURE AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
 Charging Party Signature			

EXHIBIT 1